

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE NEW YORK TIMES COMPANY,	:	
	:	
Plaintiff,	:	
	:	<u>COMPLAINT</u>
v.	:	
FEDERAL BUREAU OF INVESTIGATION,	:	
	:	
Defendant.	:	
_____	X	

Plaintiff THE NEW YORK TIMES COMPANY (“The Times”), by and through its undersigned attorneys, alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of agency records from the Federal Bureau of Investigation (“FBI”) in response to a request properly made by Plaintiff.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY 10018.

3. Defendant FBI is the agency within the federal government that has possession and control of the records that Plaintiff seeks.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is premised on the place of business of Plaintiff and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

6. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

7. Defendant FBI has failed to meet the statutory deadlines set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)–(B). Plaintiff is therefore deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

8. In December 2016, diplomats and their families in Cuba reported experiencing a series of unexplainable neurological injuries, termed “Havana Syndrome.” Then-Secretary of State Rex Tillerson described these injuries as “health attacks” and promised to investigate and “hold the Cuban authorities responsible.” Dan Hurley, *Was It an Invisible Attack on U.S. Diplomats, or Something Stranger?*, N.Y. Times Mag. (May 15, 2019), <https://www.nytimes.com/interactive/2019/05/15/magazine/diplomat-disorder.html>.

9. In the over five years since, Havana Syndrome has received intense political scrutiny, including a congressionally mandated investigation, has led to sanctions against Cuba, and has resulted in the withdrawal of the majority of US diplomats from Havana.

10. As the number of diplomats experiencing Havana Syndrome has increased, the government has more frequently affirmed its commitment to discovering the source of Havana Syndrome.

11. Today, over 200 people are known to have shown symptoms of Havana Syndrome. Yet the government has provided the public with little information regarding its many investigations into Havana Syndrome and has not yet endorsed any of the many theories

surroundings its cause, noting only that “[i]ntelligence officials have not yet found any hard evidence that points to a cause.” *See* Julian E. Barnes & Adam Goldman, *Review Finds No Answers to Mystery of Havana Syndrome*, N.Y. Times (Dec. 2, 2021), <https://www.nytimes.com/2021/12/02/us/politics/havana-syndrome.html>.

12. The only meaningful information that the public has received about Havana Syndrome is that obtained via FOIA requests filed by BuzzFeed and other news entities. *See, e.g.,* Dan Vergano, *The US Government Botched Its Investigation into the Mysterious “Sonic Attack” in Cuba, Emails Reveal*, BuzzFeed (May 29, 2019), <https://www.buzzfeednews.com/article/danvergano/havana-syndrome-research-cuba-sonic-attack>; Dan Vergano, *Medical Records Can’t Explain “Havana Syndrome,” A Buried CDC Report Says*, BuzzFeed News (Jan. 15, 2021), <https://www.buzzfeednews.com/article/danvergano/cdc-investigation-cuba-havana-syndrome>.

13. On December 9, 2021, The Times submitted a FOIA Request (“the Request”) to the FBI, seeking a “copy of the FBI Behavioral Analysis Unit’s report that found that Havana Syndrome was a mass psychosis/functional illness.”

14. On December 15, 2021, the FBI acknowledged receipt of the Request and assigned in FOIPA No. 1512375-000.

15. On March 29, 2022, The Times asked the FBI to provide a status update and an estimated date of completion for the Request. The FBI informed The Times that it was still searching for records responsive to the Request and thus, based on the average processing time for complex requests, estimated that the estimated date of completion would be 1,929 days from the date the FBI opened the Request: March 22, 2027.

16. As of the date of this filing, the FBI has not since communicated in any way with The Times.

CAUSE OF ACTION

17. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

18. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request, any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

19. Defendant has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)–(B). Accordingly, Plaintiff is deemed to have exhausted their administrative remedies under FOIA.

20. Defendant is permitted to withhold documents or parts of documents only if one of FOIA’s enumerated exemptions apply.

21. No exemptions permit the withholding of the documents sought by the Request.

22. Accordingly, Plaintiff is entitled to an order compelling Defendant to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

23. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

24. Order Defendant to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court’s order;

25. Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

26. Grant Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, NY
May 4, 2022

/s/ David E. McCraw

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